

Use versus priority: comments on a paper by P. F. S. Cornelius, with alternative proposals for the conservation of well-known names

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Abstract. The proposal of P. F. S. Cornelius (1987; *Bulletin of Zoological Nomenclature*, 44: 79–85) would require changes to the Code which might delay its implementation for years. His purposes could be largely achieved by streamlining the operation of Articles 23b & 79, with emphasis on direct conservation rather than on suppression. Conservation would be achieved by a ruling of the Commission that the name to be conserved is deemed to have precedence over *all* senior synonyms and homonyms.

The case presented by Cornelius (1987) in favour of the conservation of well-known names against the 'relentless' application of the unmoderated Principle of Priority is very impressive. So are his criticisms of the practical operation of Article 23b of the Code, with the heavy burden it places upon authors applying to the Commission for suppression of unused senior synonyms — and indeed upon the Commission itself. Abandonment of a currently used but junior name not only requires non-taxonomists (the principal users) to learn the 'new' name, but also to remember (or learn) that it refers to the same taxon cited in an extensive earlier literature under the 'old' name.

The solution Cornelius offers involves the designation by the Commission of 'Protected Works', on the recommendation of specialist panels. It thus places the emphasis squarely on the direct *conservation* of widely used names, as distinct from the *suppression* of their unused senior synonyms. The implications of the proposal will need to be carefully worked out, since there are some evident problems. Not the least of these is that, whatever its ultimate form, it would call for significant modifications and additions to the Code and might well not be operative until the next edition some years hence.

There is, however, an alternative procedure applicable within the present terms of the Code but with a less ritualistic use of Articles 23b & 79 than has been the practice. Certain features of these Articles do not seem to be generally appreciated: (1) Art. 23b states that 'an author who considers that the application of the Principle of Priority would disturb stability or universality or cause confusion *is to* [i.e. *must*, not *may*] maintain existing usage and refer the case to the Commission for a ruling'. (2) This positive instruction is, however, conditional upon the author 'considering' that stability or universality would be disturbed. It therefore gives him a wide subjective discretion which he may be tempted to rationalise. However, even if author A proceeds on the view that there would not be significant disturbance, a later author B may feel that there would. If B then applies to the Commission, Art. 79c(2)(i) requires that A's use of the otherwise unused senior synonym be not accepted as usage. Thus an author who fails to act under Art. 23b has to face the prospect that his usage may be challenged and invalidated. (3) The conditions listed under Art. 79c as providing a *prima facie* case that stability is threatened do no more than that. The 'guiding principles' governing

suppression of senior names by the Commission are said in Art. 79b not to 'limit its use of that power' (i.e. the plenary power to suspend the application of the Code in a particular case): thus a name may be suppressed even though the *prima facie* conditions have not been met. (4) Finally, Art. 79a prescribes that the Commission may '*conserve* [my italics], totally, partially, or conditionally suppress, or make available any name. . .'. That is, the Code does not envisage *conservation* of a name as being necessarily attainable only by the *suppression* of other names. This opens the way to some such scheme as that of Cornelius, but it also broadens the possibilities under the existing provisions of the Code.

The goal should be to conserve the widely used name against the threat of little-used senior synonyms or homonyms: the means to this end are secondary. Moreover, it should not be regarded as a requirement (and is not, under the Code — see above) that a senior name should never have been used during the previous 50 years. Enormous amounts of time have been wasted in attempting to establish that a name has never been used in the primary literature over that period. What the Commission needs is evidence that a name has been in extensive and almost exclusive use for the taxon in question over a considerable period of years, especially in authoritative revisions and major textbooks. It would be ritualistic to be bound by precise figures for number of publications, authors, and years: there should be sufficient flexibility to allow each case to be considered on its merits. Suppression of senior names is not necessary. Conservation can be achieved by a ruling under the plenary power that the name to be conserved is to have precedence over *any* senior synonym or homonym. Given that precedence, the status of chronologically senior names would come under the ordinary provisions of the Code as *junior* synonyms or homonyms.

The above procedure would save an enormous amount of time and labour on the part of both the applicant and the Commission's Secretariat. Further savings would result from an abandonment by the Commission of its 'in house' principle of 'completeness of ruling'. This principle can lead to involved investigation of matters having no significant relation to the purposes of an application, and concerning which there may be no conflict. It is not an investigation that an applicant should be required to undertake, and can only delay the reaching of a decision by the Commission. I believe that if these procedural changes are adopted much freer use will be made of those provisions of the Code that promote the conservation of well known names, without the need for any change in its wording.

Reference

- Cornelius, P. F. S. 1987. Use versus priority in zoological nomenclature. *Bulletin of Zoological Nomenclature*, **44**(2): 79–85.